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HOUSE BILL 475

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Daniel R. Foley

AN ACT

**RELATING TO SEXUAL OFFENSES; REQUIRING SEX OFFENDERS TO PROVIDE
DNA SAMPLES WHEN REGISTERING; INCLUDING SEX OFFENDERS AS
COVERED OFFENDERS SUBJECT TO COLLECTION OF DNA SAMPLES;
AMENDING SECTIONS OF THE SEX OFFENDER REGISTRATION AND
NOTIFICATION ACT; AMENDING A SECTION OF THE DNA IDENTIFICATION
ACT; MAKING AN APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 29-11A-4 NMSA 1978 (being Laws 1995,
Chapter 106, Section 4, as amended) is amended to read:**

**"29-11A-4. REGISTRATION OF SEX OFFENDERS-- INFORMATION
REQUIRED-- CRIMINAL PENALTY FOR NONCOMPLIANCE. --**

**A. A sex offender residing in this state shall
register with the county sheriff for the county in which the
sex offender resides.**

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1 B. A sex offender who is a current resident of New
2 Mexico shall register with the county sheriff no later than ten
3 days after being released from the custody of the corrections
4 department or being placed on probation or parole. A sex
5 offender who changes his residence to New Mexico shall register
6 with the county sheriff no later than ten days after
7 establishing residence in this state. When a sex offender
8 registers with the county sheriff, he shall provide the
9 following registration information:

- 10 (1) his legal name and any other names or
11 aliases that he is using or has used;
- 12 (2) his date of birth;
- 13 (3) his social security number;
- 14 (4) his current address;
- 15 (5) his place of employment;
- 16 (6) the sex offense for which he was
17 convicted; and
- 18 (7) the date and place of his sex offense
19 conviction.

20 C. A sex offender who is a resident of another
21 state but who is employed in New Mexico or attending school in
22 New Mexico shall register with the county sheriff for the
23 county in which the sex offender is working or attending
24 school.

25 D. A sex offender who is a resident of another

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1 state but who is employed in New Mexico or attending school in
2 New Mexico shall register with the county sheriff no later than
3 ten days after beginning work or school. When the sex offender
4 registers with the county sheriff, he shall provide the
5 following registration information:

6 (1) his legal name and any other names or
7 aliases that he is using or has used;

8 (2) his date of birth;

9 (3) his social security number;

10 (4) his current address in his state of
11 residence and, if applicable, the address of his place of
12 lodging in New Mexico while he is working or attending school;

13 (5) his place of employment or the name of the
14 school he is attending;

15 (6) the sex offense for which he was
16 convicted; and

17 (7) the date and place of his sex offense
18 conviction.

19 E. When a sex offender registers with a county
20 sheriff, the sheriff shall obtain:

21 (1) a photograph of the sex offender and a
22 complete set of the sex offender's fingerprints; [and]

23 (2) a description of any tattoos, scars or
24 other distinguishing features on the sex offender's body that
25 would assist in identifying the sex offender;

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1 (3) a DNA sample for insertion into the DNA
2 identification system as a covered offender pursuant to the
3 provisions of the DNA Identification Act; and

4 (4) a DNA fee of one hundred dollars (\$100).
5 The fee shall be deposited in the DNA identification system
6 fund.

7 F. When a sex offender who is registered changes
8 his residence within the same county, the sex offender shall
9 send written notice of his change of address to the county
10 sheriff no later than ten days after establishing his new
11 residence.

12 G. When a sex offender who is registered changes
13 his residence to a new county in New Mexico, the sex offender
14 shall register with the county sheriff of the new county no
15 later than ten days after establishing his new residence. The
16 sex offender shall also send written notice of the change in
17 residence to the county sheriff with whom he last registered no
18 later than ten days after establishing his new residence.

19 H. Following his initial registration pursuant to
20 the provisions of this section:

21 (1) a sex offender required to register
22 pursuant to the provisions of Subsection D of Section
23 29-11A-5 NMSA 1978 shall annually renew his registration with
24 the county sheriff prior to December 31 of each subsequent
25 calendar year for a period of twenty years; and

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1 (2) a sex offender required to register
2 pursuant to the provisions of Subsection E of Section
3 29-11A-5 NMSA 1978 shall annually renew his registration with
4 the county sheriff prior to December 31 of each subsequent
5 calendar year for a period of ten years.

6 I. A sex offender who willfully fails to comply
7 with the registration requirements set forth in this section is
8 guilty of a fourth degree felony and shall be sentenced
9 pursuant to the provisions of Section 31-18-15 NMSA 1978.

10 J. A sex offender who willfully provides false
11 information when complying with the registration requirements
12 set forth in this section is guilty of a fourth degree felony
13 and shall be sentenced pursuant to the provisions of Section
14 31-18-15 NMSA 1978. "

15 Section 2. Section 29-11A-5 NMSA 1978 (being Laws 1995,
16 Chapter 106, Section 5, as amended) is amended to read:

17 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
18 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
19 THE NATIONAL SEX OFFENDER REGISTRY-- RULES. --

20 A. A county sheriff shall maintain a local registry
21 of sex offenders in his jurisdiction required to register
22 pursuant to the provisions of the Sex Offender Registration and
23 Notification Act.

24 B. The county sheriff shall forward:

25 (1) registration information obtained from sex

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1 offenders to the department of public safety. The initial
2 registration information and any new registration information
3 subsequently obtained from a sex offender shall be forwarded by
4 the county sheriff no later than ten working days after the
5 information is obtained from a sex offender. If the department
6 of public safety receives information regarding a sex offender
7 from a governmental entity other than a county sheriff, the
8 department shall send that information to the sheriff for the
9 county in which the sex offender resides;

10 (2) samples of DNA obtained from sex offenders
11 to the DNA identification system's administrative center for
12 insertion in the DNA identification system as covered offenders
13 pursuant to the DNA Identification Act; and

14 (3) collected DNA fees to the department of
15 public safety for deposit into the DNA identification system
16 fund.

17 C. The department of public safety shall maintain a
18 central registry of sex offenders required to register pursuant
19 to the provisions of the Sex Offender Registration and
20 Notification Act. The department shall participate in the
21 national sex offender registry administered by the United
22 States department of justice. The department shall send
23 conviction information and fingerprints for all sex offenders
24 registered in New Mexico to the national sex offender registry
25 administered by the United States department of justice and to

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1 the federal bureau of investigation.

2 D. The department of public safety shall retain
3 registration information regarding sex offenders convicted for
4 the following sex offenses for a period of twenty years
5 following the sex offender's conviction, release from prison or
6 release from probation or parole, whichever occurs later:

7 (1) criminal sexual penetration in the first
8 or second degree, as provided in Section 30-9-11 NMSA 1978;

9 (2) criminal sexual contact of a minor in the
10 second or third degree, as provided in Section 30-9-13 NMSA
11 1978;

12 (3) sexual exploitation of children, as
13 provided in Section 30-6A-3 NMSA 1978;

14 (4) kidnapping, as provided in Section 30-4-1
15 NMSA 1978, when the victim is less than eighteen years of age
16 and the offender is not a parent of the victim; or

17 (5) attempt to commit any of the sex offenses
18 set forth in Paragraphs (1) through (4) of this subsection, as
19 provided in Section 30-28-1 NMSA 1978.

20 E. The department of public safety shall retain
21 registration information regarding sex offenders convicted for
22 the following offenses for a period of ten years following the
23 sex offender's conviction, release from prison or release from
24 probation or parole, whichever occurs later:

25 (1) criminal sexual penetration in the third

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1 or fourth degree, as provided in Section 30-9-11 NMSA 1978;

2 (2) criminal sexual contact in the fourth
3 degree, as provided in Section 30-9-12 NMSA 1978;

4 (3) criminal sexual contact of a minor in the
5 fourth degree, as provided in Section 30-9-13 NMSA 1978;

6 (4) sexual exploitation of children by
7 prostitution, as provided in Section 30-6A-4 NMSA 1978;

8 (5) false imprisonment, as provided in Section
9 30-4-3 NMSA 1978, when the victim is less than eighteen years
10 of age and the offender is not a parent of the victim;

11 (6) solicitation to commit criminal sexual
12 contact of a minor in the second, third or fourth degree, as
13 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

14 (7) attempt to commit any of the sex offenses
15 set forth in Paragraphs (1) through (5) of this subsection, as
16 provided in Section 30-28-1 NMSA 1978.

17 F. The department of public safety shall adopt
18 rules necessary to carry out the non-DNA provisions of the Sex
19 Offender Registration and Notification Act.

20 G. The DNA identification system oversight
21 committee and the DNA identification system's administrative
22 center shall adopt rules necessary to carry out the DNA
23 provisions of the Sex Offender Registration and Notification
24 Act. "

25 Section 3. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,

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1 Chapter 19, Section 8, as amended) is amended to read:

2 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
3 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
4 NOTIFICATION--INTERNET WEB SITE. --

5 A. If a sex offender is convicted of one of the
6 following sex offenses, the county sheriff shall forward
7 registration information obtained from the sex offender to the
8 district attorney for the judicial district in which the sex
9 offender resides and, if the sex offender is a resident of a
10 municipality, the chief law enforcement officer for the
11 municipality in which the sex offender resides:

12 (1) criminal sexual penetration in the first
13 or second degree, as provided in Section 30-9-11 NMSA 1978;

14 (2) criminal sexual contact of a minor in the
15 second, third or fourth degree, as provided in
16 Section 30-9-13 NMSA 1978;

17 (3) sexual exploitation of children, as
18 provided in Section 30-6A-3 NMSA 1978;

19 (4) sexual exploitation of children by
20 prostitution, as provided in Section 30-6A-4 NMSA 1978; or

21 (5) attempt to commit any of the sex offenses
22 set forth in Paragraphs (1) through (4) of this subsection, as
23 provided in Section 30-28-1 NMSA 1978.

24 B. A person who wants to obtain registration
25 information regarding sex offenders described in Subsection A

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1 of this section may request that information from the:

2 (1) sheriff for the county in which the sex
3 offenders reside;

4 (2) chief law enforcement officer for the
5 municipality in which the sex offenders reside;

6 (3) district attorney for the judicial
7 district in which the sex offenders reside; or

8 (4) secretary of public safety.

9 C. Upon receiving a request for registration
10 information regarding sex offenders described in Subsection A
11 of this section, the county sheriff, chief municipal law
12 enforcement officer, district attorney or secretary of public
13 safety shall provide that registration information, with the
14 exception of a sex offender's social security number, within a
15 reasonable period of time, and no later than seven days after
16 receiving the request.

17 D. Within seven days of receiving registration
18 information from a sex offender described in Subsection A of
19 this section, the county sheriff shall contact every licensed
20 daycare center, elementary school, middle school and high
21 school within a one-mile radius of the sex offender's residence
22 and provide them with the sex offender's registration
23 information, with the exception of the sex offender's social
24 security number.

25 E. The department of public safety may establish

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1 and manage an internet web site that provides the public with
2 registration information regarding sex offenders described in
3 Subsection A of this section. The registration information
4 provided to the public pursuant to this subsection shall not
5 include a sex offender's social security number or a sex
6 offender's place of employment, unless the sex offender's
7 employment requires him to have direct contact with children.

8 F. DNA analysis information shall only be disclosed
9 pursuant to the provisions of Section 29-16-8 NMSA 1978."

10 Section 4. Section 29-16-3 NMSA 1978 (being Laws 1997,
11 Chapter 105, Section 3, as amended) is amended to read:

12 "29-16-3. DEFINITIONS. --As used in the DNA Identification
13 Act:

14 A. "administrative center" means the law
15 enforcement agency or unit that administers and operates the
16 DNA identification system;

17 B. "DNA oversight committee" means the DNA
18 identification system oversight committee;

19 C. "CODIS" means the federal bureau of
20 investigation's national DNA index system for storage and
21 exchange of DNA records submitted by forensic DNA laboratories;

22 D. "covered offender" means ~~any~~ a person
23 convicted of a felony offense as an adult under the Criminal
24 Code, the Motor Vehicle Code or the constitution of New Mexico,
25 ~~or~~ convicted as an adult pursuant to youthful offender or

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1 serious youthful offender proceedings under the Children's Code
2 or required to register pursuant to the Sex Offender

3 Registration and Notification Act;

4 E. "department" means the department of public
5 safety;

6 F. "DNA" means deoxyribonucleic acid as the basis
7 of human heredity;

8 G. "DNA identification system" means the DNA
9 identification system established pursuant to the DNA
10 Identification Act;

11 H. "DNA records" means the results of DNA testing
12 and related information;

13 I. "DNA testing" means a forensic DNA analysis that
14 includes restriction fragment length polymorphism, polymerase
15 chain reaction or other valid methods of DNA typing performed
16 to obtain identification characteristics of samples;

17 J. "fund" means the DNA identification system fund;

18 K. "missing persons DNA identification system"
19 means the missing persons DNA identification system established
20 by the DNA Identification Act; and

21 L. "sample" means a sample of biological material
22 sufficient for DNA testing."

23 Section 5. Section 29-16-6 NMSA 1978 (being Laws 1997,
24 Chapter 105, Section 6, as amended) is amended to read:

25 "29-16-6. COLLECTION OF SAMPLES. --

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1 A. A covered offender shall provide one or more
2 samples to the administrative center, as follows:

3 (1) a covered offender convicted on or after
4 July 1, 1997 shall provide a sample immediately upon request of
5 the corrections department so long as the request is made
6 before release from any correctional facility or, if the
7 covered offender is not sentenced to incarceration, before the
8 end of any period of probation or other supervised release;

9 (2) a covered offender incarcerated on or
10 after July 1, 1997 shall provide a sample immediately upon
11 request of the corrections department so long as the request is
12 made before release from any correctional facility; ~~and~~

13 (3) a covered offender on probation or other
14 supervised release on or after July 1, 1997 shall provide a
15 sample immediately upon request of the corrections department
16 so long as the request is made before the end of any period of
17 probation or other supervised release; and

18 (4) a covered offender who registers or renews
19 his registration as a sex offender pursuant to the provisions
20 of Section 29-11A-4 NMSA 1978 on or after January 1, 2005 shall
21 provide a sample at the time the sex offender registers or
22 renews his registration.

23 B. Samples from unidentified persons or relatives
24 of a missing person shall be provided to the administrative
25 center, as follows:

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1 (1) upon the completion of a permission to
2 search form authorizing the collection of a DNA sample;

3 (2) upon the receipt of a properly executed
4 search warrant; or

5 (3) upon the issuance of a court order.

6 C. Samples from unidentified human remains shall be
7 provided by the state medical investigator.

8 D. Samples of known reference materials from
9 missing persons shall be provided by the investigating law
10 enforcement agency. "

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